BIOSOLIDS TECHNICAL ADVISORY COMMITTEE
Amendments to Biosolids Regulations after Transfer from VDH to DEQ

FINAL MEETING NOTES
TAC MEETING – MONDAY, NOVEMBER 3, 2008

Meeting Attendees

TAC Members	*Interested Public*	*DEQ Staff*
Carl Armstrong - VDH	George Floyd	Bryan Cauthorn
Karl Berger	Charles Graf	Ellen Gilinsky
Rhonda L. Bowen	Susan Lingenfelser - USFWS	James Golden
Greg Evanylo	Harrison Moody	Angela Neilan
Katie Kyger Frazier	Jared Morton	Bill Norris
Mary Gray – Alternate for Jo Overbey	Sharon Nicklas – Alternate for Rhonda L. Bowen	Charlie Swanson
Tim Hayes	Lisa M. Ochsenhirt	Anita Tuttle
Larry Land	Mary Powell	Christina Wood
Darrell R. Marshall - VDACS	Hunter Richardson	Neil Zahradka
Jacob Powell - DCR	Susan Trumbo	
Lloyd Rhodes		
Ruddy Rose		
Henry Staudinger		
Ray York		

NOTE: The following Biosolids TAC Members were absent from the meeting: Jim Burn -VDH; Chris Nidel; Jo Overbey

1. Welcome (Ellen Gilinsky/Bill Norris):

Dr. Gilinsky, Director of DEQ's Water Division, welcomed all of the meeting participants and thanked all of the Technical Advisory Committee Members for agreeing to participate in the process. Bill Norris noted that Jo Overbey would not be able to attend today's meeting, but that Mary Graf would be sitting in for her. He also noted that Chris Nidel would be unable to attend. In addition, a representative from the US Fish and Wildlife Service, Susan Lingenfelser would be attending today's meeting.

2. Discussion of Meeting Materials Distribution (Bill Norris):

Bill Norris, Regulation Writer with the DEQ Office of Regulatory Affairs briefly discussed the distribution of meeting materials via email to the TAC members and asked whether all members had received them. A comment was made that there had been at least one instance where a member was not able to open two of the attachments. It was noted that an attempt would be made in the future to submit all of the meeting materials as either word documents or PDF files as appropriate. It was also noted that the members received via email a draft version of edits to the biosolids regulations that contained proposed “should/shall” edits and other grammatical corrections. The TAC members were

asked to review that document and examine those specific sections that were being discussed during the course of the TAC meetings so that changes and edits can be addressed as we progress through the TAC deliberations.

3. Review of Listing and Prioritization of Issues to be Addressed in Regulations – Summary from Last Meeting – A Threaded Conversation (Angela Neilan)

Angela Neilan, Community Involvement Specialist with the DEQ Office of Community Affairs presented a "threaded conversation" of the items discussed and the actions taken during the previous TAC meeting. She noted that the following topics had been agreed to by the TAC members as the initial set of issues that needed to be addressed:

- Land Disposal versus Land Application distinctions
- Health Issues – Buffers; Procedures; Expert Panel Findings
- Field Storage
- VPA/VPDES Regulations
- Nutrient Management Plans (NMPs) – Class A/Class B; Implementation
- Sampling Requirements
- Clarification of what constitutes an "odor sensitive receptor"
- Notification requirements
- Addressing Citizen Concerns – Procedures
- Permit Fees
- Should/Shall language usage
- Permitting Procedures
- Financial Assurance

A comment was made as to why there wasn't a straw-man on the "notification" language discussed during the last meeting for consideration by the TAC. Staff noted that it was the goal for future meetings to have those types of straw-men available based on the previous meetings discussions. The intent today is not to rehash anything that was discussed at the last meeting but to ensure that there were no additional comments that needed to be considered in the development of that language.

Action Item: Staff will prepare a straw-man of the "notification" language section(s) of the regulation texts for review and consideration by the TAC for the next meeting.

Angela asked for introductions and around the table of TAC members and staff and around the room for those members of the "interested public" who were in attendance. A comment was made requesting the shift of items on the agenda to allow more time for discussion of the financial assurance item. This shift was agreed to by the TAC. Finishing up the preliminary status items before moving to the financial assurance discussions, Angela asked for any comments or revisions to the draft meeting notes from the first TAC meeting. It was noted that Sharon Nicklas had attended the meeting but wasn't listed as an attendee. It was also noted that Wilmer Stoneman had not attended the meeting and wasn't listed among those that did not attend. The comment was made that Wilmer Stoneman's alternate had attended and that was so noted in the notes. A comment was made that "organic nitrogen" should have been listed among those "biosolids suggested minimum" sampling requirements that had been listed in the notes from the last meeting. Staff noted that this list had been taken directly from the VDH Biosolids Use Regulations. A comment was made that it was "absolutely necessary" to

have “organic nitrogen” included in the list. A question was raised regarding the development of a permitted approved sources and the selection criteria used and whether the criteria used would be the same for in-state as well as out-of-state sources. Staff noted that the selection criteria used would be the same and noted that the terms “instate and out-of-state” would be added to the notes to clarify this. Staff noted that the proposed changes would be made to the notes in order to finalize them for posting to Townhall.

4. Financial Assurance & DEQ (Leslie Beckwith)

Leslie Beckwith, Director of DEQ's Office of Financial Assurance provided an overview of the use of Financial Assurance in Virginia

DEQ’s Financial Assurance Program	
What exactly is Financial Assurance?	Financial assurance is a financial instrument or documentation that guarantees sufficient funds are available to conduct certain activities.
Financial Regulatory Programs	Solid Waste Program
	Hazardous Waste Program (HW)
	Underground Storage Tanks (UST)
	Aboveground Storage Tanks (AST)
	Privately Owned Sewerage Treatment Facilities
	Barge Receiving Facilities
Financial Regulatory Programs Similar to What is Required for Biosolids	HW and UST programs require pollution and third party liability financial assurance.
How is the amount of Financial Assurance decided?	Usually based on Cost Estimates provided by the owner or the operator.
	Or sliding scale specified in law (USTs and ASTs)
	Or flat fee specified in regulations and/or law (HW Storage/Treatment/Disposal facilities and Pipelines
Other Programs’ Mechanisms	Insurance
	Letters of Credit
	Surety Bonds
	Corporate Financial Test
Current Financial Assurance requirements for Biosolids	Evidence of liability and pollution insurance in form of Certificate of Insurance
	$1 M per occurrence with aggregate of $1 M for companies with less than $5 M in gross revenue and $2 M for companies with $5 M or more gross revenue

The following items were discussed following the presentation:

- The amount of the financial assurance requirements for biosolids is specified in the regulation but not specified in the Law.
- Since the regulation was open for revision, the TAC could specify the method/mechanism that should/could be used to provide financial assurance. Insurance policies are not always the best mechanism.
- The $1 M per occurrence requirement amount is reset every time it is used.
- The current language specifies “gross revenue”. Typically, audited financial statements can be used to identify the company’s gross revenue, but this can be a significant financial burden.
- “Gross Revenue” is not specified in the regulations or the Law.
- DEQ doesn’t use “gross revenue” for any other of its financial assurance programs; “net tangible assets” is used in all other DEQ programs.

- "Gross Revenue" is used in the Biosolids Regulations because it is a carry-over from the VDH Biosolids Use Regulations.
- Financial assurance would be used to clean-up pollution in the event that the company walks away from a site.
- The financial assurance requirements are based on the permittee (applicator); the person who is going to be applying the biosolids.
- The permit holder is responsible for financial assurance. Under the VPDES it is the generator; while in the VPA program it is the contract land applier.

Leslie Beckwith noted that a member of the Biosolids TAC (Henry Staudinger) had submitted a number of questions related to the DEQ approach to financial assurance. The questions and a summary of the respective answers/comments are included below:

1. **How does DEQ assure that regulatory financial responsibility requirements are met?**
    a. DEQ has a single office that reviews all of the financial assurance requirements/demonstrations for every facility that is required to send them in.
    b. A number of checklists are used. Use of checklists ensures that the insurance company identified as part of the financial assurance provisions is included on those various check lists, including the FCC. Insurance companies have to be licensed to conduct business in Virginia. FCC also has certain standards that have to be followed. A Bank (for letters of credit) has to have branches in the United States.
    c. Staff reviews every submitted financial assurance document/mechanism to see if it meets the requirements of the law.
2. **How does DEQ follow-up to make certain that insurance policies are maintained? E.G., does DEQ require notice of cancellation from the carrier?**
    a. Yes: DEQ requires a 30-Day notice of cancellation.
    b. If a facility or permittee does not provide an alternate mechanism for the required financial assurance then the policy would cashed or the insurance company would be notified that the cash needed to issued to DEQ to get the site cleaned up.
    c. The current program has a good success rate – about 99%.
    d. When AIG went belly-up, staff reviewed the financial assurance instruments that were on file and found that none of then had AIG as the financial institution of record.
    e. The Federal Government maintains a list of all insurance & surety companies authorized to do business and there is an electronic notification whenever a company has been "delisted".
    f. There is a required annual review of the submitted financial assurance mechanisms and there is a required "update for inflation" on an annual basis. Each facility has to update their financial assurance annually – require that they update for inflation. This is a requirement in the regulatory language.
    g. In the Hazardous Waste Program there is a "certification of a valid claim" that requires the permittee to notify DEQ when a claim is made against their policy. Staff doesn't think that a "certification of a claim" has ever been received.
    h. The permittee is always required to maintain a certain amount in their policy.
3. **Does DEQ follow-up to make certain the coverage extends back for several years in the event that a problem is not known until then?** (It is my understanding that often when insurance carriers are changed, it is necessary for the company to pay an additional fee to

extend coverage for the period covered by the policy. I am assuming that this concept applies, especially when it comes to biosolids.)

a. This is better known as an "insurance trailer" or an "insurance tail".
b. When you go from one insurance company to another, this is the extra premium that is required to cover insurance claims that might arise for events that may have occurred during an earlier year of the old policy, i.e., to provide coverage back a number of years.
c. The current normal policy is that an insurance company is not responsible for anything after the policy ends.
d. Environmental impairment is not normally covered in current insurance policies.
e. Most insurance policies environmental claims are currently only written by a small number of firms.
f. Environmental liability claims are not covered if the policy is allowed to lapse.
g. The DEQ UST program has a dedicated fund, the VEERF. DEQ collects fines that all go into the VEERF to deal with environmental emergencies in the state. It was noted this fund has also been subject to tapping by the General Assembly. Currently approximately $2 to $5 M is put into the fund annually from collected fines. The Director's approval limit for disbursements from the fund is currently $100,000, anything other that the Governor has to approve.
h. The DEQ Tank program is funded by 1/6 of one cent per gallon of gas sold and is dedicated to clean-up petroleum releases. This amount doesn't increase with the price of gas.

4. **How does DEQ confirm that the insurance company has the capability to pay the full amount if a serious problem results?**
    a. In other regulations, insurance companies are required to be licensed to transact business in Virginia according to a specific chapter; Property and Casualty.
    b. Required under the SCC to have a certain amount of money.
    c. Some programs allow surplus lines in the insurance polices.
    d. Captive Insurance Companies are not allowed. Captive Insurance Companies are companies that are owned and operated by larger firms. Profits are commingled so it is difficult to know how much is available to cover costs on the policy. Any company registered for business in Bahamas or Vermont is likely to be a Captive Insurance Company.
5. **Does DEQ require cross hold harmless provisions when other parties may be involved and be part of the source of the problems?**
    a. The product or the way it is applied.
    b. If the biosolids leaving the treatment plant were contaminated or caused personal injury then the Generator would be involved as well as the applicator in any initial action for recovery.
    c. Not aware of any hold-harmless provisions.
    d. The generator certifies to the applicator that the material complies with the current requirements. If that certification is false than the applicator would be able to go back to the generator to collect and recover.
    e. Actual language in the certification is that the biosolids meet all of the current DEQ requirements and are in compliance with the regulations.
    f. The generators have to certify on a monthly basis that the biosolids being generated do in fact meet the DEQ requirements and are in compliance with the regulations.

6. **Have there been incidences when the financial responsibility requirement was not met? If so, how is such a deficiency addressed?**
    a. In other programs, if you apply for a permit you cannot get a permit or a certificate to operate until you have met all of the requirements.
    b. Permits have not been issued for failure to provide the required financial assurance.
    c. Currently there are no guidelines in the biosolids program as to what needs to be provided/submitted to show that the financial assurance requirements have been met.
    d. The financial assurance requirements for the biosolids program have only been around for a short time and there are permits out there that do not have these requirements.
    e. The time period for permit is a maximum of 10 years for a VPA permit; while the maximum for a VPDES permit is 5 years.
    f. Annual requirements for biosolids permits could be specified in this rewrite of the regulations.
    g. Under VDH, these permits were Biosolids Use Regulation Permits.
7. **Does DEQ accept self guarantees? If so, could that happen with respect to land applied biosolids, and what criteria have to be met?**
    a. In other programs DEQ does accept a Corporate Financial Test and does require an Audited Financial Statement and a report from the auditor. The tangible net worth has to be $10 M (Hazardous Waste Program) in excess of what their environmental costs are.
    b. Self guarantees are accepted but it is not really money and is based on stale financial data, since the data is required 90 days after the end of the Fiscal Year.
    c. Don't have to require a financial test or corporate guarantee, can stick with a strictly cash mechanism such as "letters of credit"; "surety bonds" or "insurance policies".
8. **Have there been incidents when damages have exceeded the financial responsibility requirements? If so, how was the deficiency handled?**
    a. In other programs there is a ceiling on what the program pays and then the responsible party has to pay for the rest.
9. **If you just get a certification how do you know whether there are any funds available to deal with a problem?**
    a. In other programs, DEQ reviews the entire policy and looks at the declaration page as well as any and all endorsements.
    b. Need to ask to review the entire policy the first time that a policy is submitted.

The TAC discussed the questions of what are we providing financial assurance for and what needs to be submitted to verify ability to provide that financial assurance.

1. A comment was made that the types of things that normally occur related to a biosolids application is "a truck turns over" or " the material goes somewhere it is not supposed to" or "biosolids are applied to the wrong site". In these instances you are dealing with the required mechanical removal of material to correct the problem, which is not the same as dealing with a chemical spill under CERCLA.
2. If something hazardous gets into the biosolids after it leaves the generator then it becomes an issue of dealing with a hazardous material under CERCLA.
3. If the material meets standards under the current regulations and everyone does what they are supposed to do then what is the financial assurance for?
4. A comment was made that the financial assurance language came from the VDH Biosolids

Regulations and was put into the DEQ Biosolids Regulation language in the VPA and VPDES regulations. The question was raised as to what do we need to change or do we need to do anything.

5. The Existing VPA Financial Assurance Requirements were noted:

9VAC25-32-390. Additional monitoring, reporting and recording requirements for land application.

A. Either the operation and maintenance manual, sludge management plan or management practices plan shall contain a schedule of the required minimum tests necessary to monitor land application operation. Such testing schedule information for land application of biosolids shall contain instructions for recording and reporting. Monitoring of any associated land treatment systems shall be in accordance with the biosolids use operation and maintenance manual if provided.

B. The permit holder shall provide to the department, and to each locality in which it is permitted to land apply biosolids, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than $1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of biosolids in Virginia. The aggregate amount of financial liability maintained by the permit holder shall be $1 million for companies with less than $5 million in annual gross revenue and shall be $2 million for companies with $5 million or more in annual gross revenue.

C. Evidence of financial responsibility, which may include liability insurance, meeting the requirements herein shall be maintained by the permit holder at all times that it is authorized to transport, store or land apply biosolids in Virginia. The permit holder shall immediately notify the Department of Health in the event of any lapse or cancellation of such financial resources, including insurance coverage, as required by this section.

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6. The Existing VPDES Financial Assurance Requirements were noted:

9VAC25-31-100.P.9: An applicant for a permit authorizing the land application of sewage sludge shall provide to the department, and to each locality in which the applicant proposes to land apply sewage sludge, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than $1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of sewage sludge in Virginia. The aggregate amount of financial liability to be maintained by the applicant shall be $1 million for companies with less than $5 million in annual gross revenue and shall be $2 million for companies with $5 million or more in annual gross revenue.

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7. It was noted that the language was not in the regulations as to what the amount of the required financial assurance should be.
8. It was noted that the other issue is what does a permittee need to do to meet this requirement.
9. It was noted that the State Code language is different from that currently in the regulations as to what the financial assurance needs to be provided for. Code Section 62.1-44.19:3.H is provided below:

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§62.1-44.19:3.H. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Board written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury, and property damages resulting from the transportation, storage or land application of sewage sludge. The Board shall, by regulation, establish and prescribe mechanisms for meeting the financial responsibility requirements of this section.

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10. A comment was made that financial assurance is an important part of the regulation for the applicator and generator. We have to define what it is we are providing financial assurance for. It was suggested that having an adequate financial assurance mechanism in place would help alleviate the burden that might fall on the locality or the state if such mechanism wasn't in place and a problem occurred.
11. Staff noted that the regulation does not specify the form that the financial assurance has to be provided in. There is a need to clarify the requirements and specify in the regulation what needs to be provided to satisfy the financial assurance requirements.
12. Staff noted that the question of whether the financial assurance amount should be based on "gross revenues" or on some other method needs to be addressed. It was also noted that the "gross revenues" were not used in any other financial assurance program within DEQ and is harder to verify. So the question remains as to what needs to be submitted for financial assurance?
13. A comment was made that maybe the amount of financial assurance required should be based on how much material (biosolids) is applied or the number of acres that biosolids is applied to.
14. A question was raised regarding the acceptance of "state income tax returns" as the basis for financial assurance? Staff noted that DEQ doesn't accept "state income tax returns" under any of its other programs and that the biosolids program should be similar to others requiring financial assurance. It was suggested that other mechanisms such as "letters of credit"; "financial test certifications"; "surety bonds"; and/or "insurance policies" should be considered.
15. Staff noted that EPA does not consider tax forms as evidence of financial responsibility. In addition a submitted "tax return" would fall under the FOIA requirements.
16. A comment was made that instead of trying to prove financial assurance capabilities that everyone should just be required to provide the $2 M per occurrence as a flat fee.
17. The question was raised as to what you needed to submit to show that the company was good for the flat fee amount of $2 M per occurrence? It was suggested that there should be a list of different mechanisms that could be used and that the required documentation would need to be submitted annually to verify ability to provide the required financial assurance amount.

ACTION ITEM: Biosolids Program staff will work with the Financial Assurance staff to develop a hybrid financial assurance proposal for the biosolids program that will identify a menu of options for providing evidence of the ability to provide the required financial assurance.

18. A question was raised regarding the difference in the language of the regulation and that of the statute. Why is "bodily injury" included in the regulation, but is not in the statute? The regulation should reflect what is required in the statute.
19. A question was also raised regarding the inclusion of the phrase "to each locality in which it is permitted to land apply biosolids" with regard to providing evidence of financial assurance. A comment was made that this was not necessary and in fact localities that had been contacted regarding this didn't know anything about it and wanted to know why they would need to review the documentation if DEQ already had.

ACTION ITEM: It was recommended that this language be removed from Section 9VAC25-32-390.B and 9VAC25-31-100.P.9.

5. FEE Regulation – Fees Related to the Addition of Land Application Sites (Neil Zahradka)

Neil Zahradka provided the TAC with a handout on application fees for Biosolids Application permits (included below):

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§62.1-44.19:3.F: The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons applying for permits and permit modifications pursuant to this section. All fees collected pursuant to this subsection shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit shall be $5,000. The fee for the reissuance, amendment, or modification of a permit for an existing site shall not exceed $1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the Department. (Emphasis added.)

He noted the following items related to the fees for Biosolids Application permits:

- Application fee = $5,000
- Modification fee (VPDES) = Tiered structure
- Modification fee (VPA) = Flat Rate of $1,000
- Also included are maintenance fees, which are not a reissuance fee, but is paid on an annual basis for the term of the permit. For a VPDES permit, the statute provides that the annual maintenance fee shall not exceed $1,000 per year. For a 10 year VPA permit which was issued for $5,000, the annual maintenance fee should be $500. The Fee regulation currently sets the maintenance fee at $750. Staff noted that this should be corrected in any revisions to the regulations. The permit maintenance fee regulation section is included below:

9VAC25-20-142. Permit maintenance fees.

A. The following annual permit maintenance fees apply to each individual VPDES and VPA permit, including expired permits that have been administratively continued, except those exempted by 9VAC25-20-50 B or 9VAC25-20-60 A 4:

1. Virginia Pollutant Discharge Elimination System (VPDES) permitted facilities. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	$4,800
VPDES Municipal Major/Greater Than 10 MGD	$4,750
VPDES Municipal Major/2 MGD - 10 MGD	$4,350
VPDES Municipal Major/Less Than 2 MGD	$3,850
VPDES Municipal Major Stormwater/MS4	$3,800
VPDES Industrial Minor/No Standard Limits	$2,040
VPDES Industrial Minor/Standard Limits	$1,200
VPDES Industrial Minor/Water Treatment System	$1,200

VPDES Industrial Stormwater	$1,440
VPDES Municipal Minor/Greater Than 100,000 GPD	$1,500
VPDES Municipal Minor/10,001 GPD - 100,000 GPD	$1,200
VPDES Municipal Minor/1,001 GPD - 10,000 GPD	$1,080
VPDES Municipal Minor/1,000 GPD or Less	$400
VPDES Municipal Minor Stormwater/MS4	$400

2. Virginia Pollution Abatement (VPA) permits. (Note: Land application rates listed in the table below are facility "design" rates.)

VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	$1,500
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	$1,050
VPA Industrial Sludge Operation	**$750**
VPA Municipal Wastewater Operation	$1,350
VPA Municipal Sludge Operation	**$750**
VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
All other operations not specified above	$75

B. Additional permit maintenance fees.

1. An additional permit maintenance fee of $1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.

2. An additional permit maintenance fee of $1,000 shall be paid annually by permittees that have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls).

3. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the total permit maintenance fees for all permits held as of April 1, 2004, shall not exceed $20,000 per year.

C. If the category of a facility (as described in 9VAC25-20-142 A 1 or 2) changes as the result of a permit modification, the permit maintenance fee based upon the permit category as of April 1 shall be submitted by October 1.

D. Annual permit maintenance fees may be discounted for participants in the Environmental Excellence Program as described in 9VAC25-20-145.

In addition to the implications of the fee regulations to the biosolids program, Neil Zahradka noted that the issue of whether the addition of land to a biosolids permit was to be classified as a major or a minor permit modification needed to be addressed. Section 9VAC25-32-240 (included below) includes language which defines what constitutes a minor modification. The current language does not include the addition of land in the definition of what constitutes a minor modification. It does spell out what the statute spells out as the procedure for public notice for an increase in acreage of 50% or more.

9VAC25-32-240. Minor modification.

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VPA permit without following the public involvement procedures.

B. Minor modification may only:

1. Correct typographical errors;

2. Require reporting by the permittee at a frequency other than that required in the VPA permit;

3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in name, ownership or operational control when the board determines that no other change in the VPA permit is necessary, provided that a written agreement containing a specific date for transfer of VPA permit responsibility, coverage and liability from the current to the new permittee has been submitted to the department;

5. Delete the listing of a land application site when the pollutant management activity is terminated and does not result in an increase of pollutants which would exceed VPA permit limitations;

6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such reduction results from a shutdown of processes or pollutant generating activities or from connection of the permitted activity to a POTW;

7. Change plans and specifications where no other changes in the VPA permit are required;

8. Authorize treatment facility expansions, production increases or process modifications which will not cause a significant change in the quantity of pollutants being managed or a significant change in the nature of the pollutant management activity; or

9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

C. An application for a permit amendment to increase the acreage authorized by the permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

Staff noted that the language addressing the increase of acreage of 50% or more is included in statute as provided below:

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§62.1-44.19:3.C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection B, shall include:

10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for a permit amendment to increase the acreage authorized by the permit by 50 percent or more shall be treated as a new application for the purposes of public notice and public hearings. (Emphasis added.)

Staff noted that the other issue that needs to be addressed in the regulations is that in the current language related to the addition of land under a VPDES permit (included below) that a permittee is

allowed to add land without a permit modification and no fee, however it does provide that the increase in acreage by 50% or more is treated as a new application for purposes of public notice and public hearings.

Land Application Plan Language - 9VAC25-31-100.P.8

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(1) Describes the geographical area covered by the plan;

(2) Identifies the site selection criteria;

(3) Describes how the site(s) will be managed;

(4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge and to notify persons residing on property bordering such sites for the purpose of receiving written comments from those persons for a period not to exceed 30 days. The department shall, based upon these comments, determine whether additional site-specific requirements should be included in the authorization for land application at the site; and

(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

A request to increase the acreage authorized by the permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

Staff identified the current procedures in the VPA and VPDES regulations addressing the addition of land to a permit (included below):

VPA Permit

1) Permittee submits request to add new sites and fee if applicable
2) Fee
    a. minor modification = $0
    b. major modification = $1000
3) DEQ reviews application
    a. If increasing permitted acreage <50% - DEQ notifies adjacent landowners
    b. If increasing permitted acreage 50% or more – DEQ holds public meeting (must be noticed in newspaper)
4) 30 day comment period follows for adjacent landowners or public to comment.
5) Minor modifications do not require general public notice or opportunity for public hearing unless they render the permit less stringent or the modification is contested by the permittee. (Addition <50% suggested by statute to be a minor modification)
6) Major modifications require public notice of the changes to the permit, and the potential for a public hearing. (This is the requirement if increasing permitted acreage 50% or more)

VPDES Permit

1) Permittee submits request to add new sites and fee if applicable.
2) Fee
    a. If added under land application plan = $0
    b. If major modification = $1000
3) DEQ reviews application
    a. If increasing permitted acreage <50% - DEQ notifies adjacent landowners
    b. If increasing permitted acreage 50% or more – DEQ holds public meeting (must be noticed in newspaper)
4) Public notice of land application sites is published in the newspaper (required content in land application plan)
5) 30 day comment period follows for adjacent landowners or public to comment.
6) Major modifications require public notice of the changes to the permit, and the potential for a public hearing. (This is the requirement if increasing permitted acreage 50% or more)

The TAC discussed the issues of major versus minor modification and the addition of acreage to a permit and the implications to the public notice process. The following points were raised during the discussions:

- Have to abide by the statute – the language in the regulation has to conform to what is spelled out in statute.
- Need to identify a way to align the major and minor modification language with the statute.
- The VDH biosolids use regulations did not include any minor modification language.
- The statute does not define major or minor modification.
- A question was raised regarding what is the starting point for the 50% or more increase in acreage? Staff noted that the current interpretation is that the percentage of acreage in the permit at the time the modification is requested is the starting point. It results in being a cumulative calculation.
- Staff noted that the question that needs to be addressed by the TAC is do we add another item to the list of what constitutes a minor modification to describe addition of land under the program as a minor modification?
- It was noted that the Land Application Plan language from the VPDES regulation mentioned earlier in 9VAC25-31-100.P.8.e includes a requirement for the identification of "site selection criteria" for the addition of land to a permit.
- The use of "site selection criteria" by certain localities was discussed. The use of a substantive process for site selection criteria based on local experience with the process and public input was mentioned. The importance of having more acreage included (pre-approved) in the permit than is normally used for land application during any given year, so that the permittee always has available sites to choose from was identified.
- A comment was made that DEQ should identify a minimum list of criteria that all applicants would look at as part of their site selection criteria.
- A comment was also made that the applicant might be able to provide its site selection criteria in advance to DEQ for approval.
- The importance of having identified and pre-approved site selection criteria was discussed.
- It was noted that in some localities the specific site selection criteria was developed after actually going out to the sites/farms to identify what types of problems there might be and after meetings with local residents to identify site specific concerns and the needs for expanded buffers.
- The need to apply the same rules to both the VPA and VPDES permitting process was noted.
- A comment was made that every application has more land permitted than they apply on every year so the real question that needs to be addressed is does the addition of land fall into the classification of a major or minor modification?
- A request was made for a clarification of the current process used to add land to a permit. Staff clarified that according to the "land application plan" language included above (9VAC25-31-100.P.8.e) that DEQ would review the site selection process used by each individual applicant. It was noted that the site selection process/criteria may be different for each applicant. Staff noted that item #4 was added to the VPDES regulation due to statutory changes to allow for the determination of whether additional site-specific requirements are needed based on comments from "persons residing on property bordering such sites". Staff

also noted that item #5 requiring public notice in "a newspaper of general circulation in the area of the land application site" was already included in the VPDES regulations. Staff noted that the last line of the section was added as a result of statutory changes. This sentence reads "A request to increase the acreage authorized by the permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings." Staff informed the TAC that the language as it exists now is a mix of what was in the VPA and what was in the VDH BUR and that everything is done without a fee. The 50% rule only applies to the public notice requirements.

- A comment was made that there should not be a complicated process involved to add acreage to an existing permit.
- A comment was made that farmers need a decision. Does their farm qualify or not for the application of biosolids? The decision time-line is more critical than ever.
- Staff noted that anytime a field is added (acreage is added) that more "neighbors" are added and if 50% is reached then there are additional public notice and public comment period requirements. It was noted that the 50% rule is simply a "public notice" trigger.
- A comment was made that the "land" is not pre-approved; it is the "site selection criteria" that is pre-approved.
- A comment was made that the real concern is that just dealing with percentage doesn't address the greater potential impact of a greater amount of acreage being added if the current permit contains only hundreds of acres versus one that contains thousands of acres.
- A comment was made regarding that by not including fees as part of the "addition of land" requirements that DEQ would still have to do work and therefore taxpayers would be paying for these services. Staff responded that all of the biosolids positions are paid for through the existing fee structures identified in the regulations.

6. Options for adding Land to an Existing Permit – Group Discussions (Neil Zahradka)

Discussion regarding the options for adding land to an existing permit continued by the TAC following a brief break. Staff summarized the current options:

- Consider any addition of land a modification.
  1. $\geq$ 50% - Major – Public Meeting + Fee
  2. < 50% - Minor
- Consider the land application language from VPDES – Approval of site selection criteria (process) – Put VPDES language into VPA.
- No major or minor, just the addition of land.
- Any land added is a minor modification.

Staff noted that this is just a process; it does not change anything that DEQ does on the ground. Staff will be dealing with the same technical issues on the ground. The process that needs to be addressed is:

- Public Meeting – When is it held?
- Notification – How does DEQ notify adjacent/bordering property owners?
- Cost – Are there any additional fees related to the addition of land?

Staff noted that if DEQ has to notify adjacent property owners when several thousands of acres are

added to a permit that it can be an arduous process. The use of the public notice in the newspaper is an easier process to follow.

The TAC discussed the options available for adding land to a permit. The following items were brought up during the discussions:

- A comment was made that the use of "tags" should be eliminated. The use of the terms "major" and "minor" as it relates to the addition of land is confusing. In addition, the administrative costs associated with trying to collect a small fee ($1,000) related to the addition of land is probably not worth it. The suggestion was made that there be no fees associated with the addition of land. What is important is the addition of land. If it is $\geq$ 50% then there is a public meeting if it is < 50% there is a public notice.
- A comment was made that the neighbors (adjoining and/or bordering) should be notified regardless of the percentage of land added to a permit.
- A question was raised as to what form the notification of neighbors should take? Staff noted that this would normally take the form of a letter to the neighbors, but that the TAC could decide to identify the format that the notification should take as part of the regulation language.
- A question was raised regarding the notification of absentee landowners? Staff noted that the resident of the property was normally who was sent the notification. It was noted that the land owners could be identified from the tax maps.
- A comment was made that the addition of land should be just that "the addition of land" and that there should be no reference to "major" or "minor" modification.
- A clarification was asked for on the use of the terms "adjacent" and "adjoining" in regard to the notification requirements. Staff noted that the statute specifies that it is "persons bordering such farms".
- The starting point for the 50% or more increase in acreage when adding land to a permit was also discussed? As noted in earlier discussions, the current staff interpretation is that the percentage of acreage in the permit at the time the modification is requested is the starting point. This results in a cumulative calculation since the 50% or greater factor would be predicated on the acreage at the time of the request to "add land to a permit" not on the original permitted acreage amount. Some TAC members commented that this could result in a substantial amount of land covered under the permit over a short period of time.

CONSENSUS: The TAC reached a consensus that the addition of land to a permit would not be classified as a major or a minor modification and that there would be no fee associated with the addition of land.

- A comment was made that the people residing at a site at the time of the application of biosolids are more of a concern than those that may be residing there at the time of permit application, because the concerns and possible health issues may be different.
- A comment was made that telling people that the land is coming in for a permit for land application is important. The notification can avoid lots of problems. The earlier that you can let people in the area know that a site is being considered for land application of biosolids the better.
- A comment was made that in addition to the % cutoff that there should be a limit on the number of acres that could be added without additional notification. There was

disagreement on the TAC as to what a limit should be. It was noted that the legislature had settled on the 50% limitation and put that in the statute, so that is the figure that we have to address in the regulations.

- Staff noted that a public meeting is held when the initial permit application is made. This is a meeting where the public is welcome to ask questions, but it is not a recorded meeting and there is no hearing officer. The permit process provides an opportunity for the public to request a public hearing (25 or more persons have to request the public hearing) after DEQ has drafted a permit. This hearing and associated comments received prior to the hearing can result in a "change to the permit conditions" and the "addition of site specific conditions". Staff reminded the TAC that the 50% or greater statutory language requires the same public notice and public hearing requirements as a new application.
- A comment was made that a local option for holding a public meeting should be included as part of the regulations.
- A comment was made that the notification of adjoining landowners/residents would provide some opportunity for residents to ask DEQ to consider site specific conditions before the permit is issued.
- A comment was made that the real issue with notification is that there are a number of instances where the residents don't know what "biosolids" are and what the potential impact of the application of biosolids might be to the adjoining properties.
- A comment was made that a local monitor currently serve in the role of providing additional notification of the pending application of biosolids on a site and the identification of site specific concerns or environmentally sensitive areas that should receive special considerations or restrictions.
- Staff noted that the issue was to make sure that the public is notified.
- A comment was made that the acreage involved in the addition of land to an adjacent permit should also be considered.
- A comment was raised regarding the notification of health concerns and issues. Staff responded that if a neighbor indicates that there is a health issue that that can be addressed with an increased buffer either in the permit's site specific conditions or as an additional requirement prior to the application of the biosolids, depending on when the notification of a health issue is received.
- A comment was raised regarding the need for an acreage figure instead of a percentage figure. It was noted that the statutory language clearly addresses a percentage figure and that any attempt to develop an acreage figure would have to be dealt with through a legislative change, which is not the role of this TAC.

CONSENSUS: The TAC reached a consensus that DEQ should notify adjacent property owners if acreage is added to an existing permit, no matter the percentages involved. This notification should be done in an appropriate and an effective manner.

7. Next Meeting (Bill Norris)

Staff asked that the "should/shall" revisions to the Biosolids Regulations be addressed as each specific of the regulations were discussed by the TAC. Staff noted that in future meetings of the TAC that specific proposed language revisions would be developed by staff and provided to the TAC for review prior to the next TAC meeting so that the discussions of the TAC can transition to actual regulation language revisions considerations. Staff noted that based on the TAC discussions that the following

draft language sections would be developed and provided to the TAC for discussion at the next meeting:

- Financial Assurance – Hybrid approach for biosolids
- Notification language
- Examples of possible site selection criteria – a laundry list of minimum site selection criteria that should be considered.

Staff noted that the next scheduled meeting of the Biosolids TAC is:

- Friday, December 12, 2008 at DEQ's Piedmont Regional Office Training Room from 9:30 AM to 4:00 PM.

8. Meeting Adjourned: Approximately 3:45 PM.